

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Civil Action No.: 2018 CA 008715 B

[Plaintiff's Proposed] Order Granting Motion for Entry of Protective Order

This Court, having considered Plaintiff the District of Columbia's Opposed Motion for Entry of Protective Order and Exhibit A thereto, this _____ day of _____, 2019, hereby ORDERS that Plaintiff's Motion is GRANTED.

Judge Fern Flanagan Saddler

Copies to: all counsel of record

EXHIBIT A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA,

Plaintiff,

v.

FACEBOOK INC.

Defendant.

Civil Action No.: 2018 CA 008715 B
Judge Fern Flanagan Saddler
Next Court Date: [Date]
Event: [Event]

PROTECTIVE ORDER

Whereas the District of Columbia (“District”) and Defendant Facebook Inc. (“Facebook”) (collectively, the “parties”) agree that certain discovery materials in this case may qualify as confidential information, and to prevent undue disclosure of any such information, have requested that the Court enter a protective order; and whereas the Court has determined that the terms set forth herein are appropriate to protect the respective interests of the parties and third parties; accordingly, it is **HEREBY ORDERED**:

1. Confidential Information. “Confidential Information” shall refer to any document, information, tangible thing, or deposition testimony that contains: (a) information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy; or (b) trade secret or commercial or financial information, to the extent disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained. During the course of this proceeding, the parties may produce documents or other information that constitutes Confidential Information, and such documents or other information may be designated as “Confidential Information” by the processes set forth in Paragraph 5 of this Order. In addition, the protections conferred by this

Order shall also extend to any information copied or extracted from information protected by this Order, as well as all copies, excerpts, summaries, or compilations of this protected information, including testimony. Confidential Information shall be limited to information and documents that have not previously been disclosed or produced by the designating party or have been previously disclosed or produced with a Confidential designation. All Confidential Information produced or exchanged in the course of this proceeding shall be used only for the purposes of the litigation and trial of this case, or any appeal, except as otherwise set out in this Order. Confidential Information must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order. The data protection should comply with ISO 27001, as evidenced by a certificate issued by a certification body accredited by the ANSI-ASQ National Accreditation Board, or FISMA (Federal Information Security Management Act) Moderate level requirements.

2. Duty of Good Faith. A designating party shall use good faith in designating information as Confidential Information, making such designation only when there is a legitimate reason for the restrictions on disclosure called for by the designation. The parties recognize this is a public enforcement lawsuit brought by the District, and that the District desires for it to be conducted on the public record to the greatest extent possible. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. A party may challenge the designation of information as “Confidential Information” when it has a good faith basis to believe the designated information is not Confidential Information (as further discussed in this Order).

3. **Limitations on Disclosure.** Unless otherwise ordered by the Court or permitted in writing by the designating party, information designated as Confidential Information shall not be disclosed, copied or disseminated to anyone, by any person or entity, except to the following:

- (a) The Court and all persons assisting the Court in this action, including law clerks, court reporters, and stenographic or clerical personnel;
- (b) attorneys, and employees or agents of the attorneys, appearing in this proceeding as counsel of record for the parties;
- (c) officers, directors and employees of the parties, including in-house counsel, who have agreed to be bound by and to comply with this Order;
- (d) court reporters and videographers involved in depositions in this case and their employees;
- (e) consultants or experts retained by counsel of record for this proceeding who have signed the “Acknowledgement and Agreement to Be Bound” that is attached hereto as Exhibit A.
- (f) litigation consultants, copy services, and other third parties who have been retained to assist the attorneys of record in translating, copying or computer coding of documents, transcribing or videotaping depositions, or assisting with hearing preparation, and their employees and subcontractors, who have signed the “Acknowledgement and Agreement to Be Bound” that is attached hereto as Exhibit A;
- (g) mediators or settlement officers, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions;
- (h) any witness, and attorneys for witnesses, provided that no copy of any document marked as “Confidential” shall be shown to or left with the witness, unless the witness

signs the “Acknowledgement and Agreement to Be Bound” that is attached hereto as Exhibit A; and

(i) other law enforcement agencies provided they agree in writing to be bound and comply with this Order;

Except for persons or entities described in Paragraphs 3(b) and 3(i), persons or entities to whom Confidential Information may be disclosed under this Order shall not use such information for any purpose other than this proceeding. Nothing contained in this Order shall prevent a party from sharing a witness’ own account-level data with that witness. Further, nothing contained in this Order shall prevent a party from sharing documents or information marked as “Confidential” with any witness (i) who authored, or (ii) previously received the document or information, but not in violation of this Order.

4. Agreement to Abide by Protective Order. Counsel for the parties (collectively, the “Lawyers”), need not be identified or provide a written acknowledgment of this Order, it being understood and acknowledged by the Lawyers that they are bound by the terms of this Order. Moreover, no court reporters or videographers will be required to provide a written acknowledgment of this Order. However, the Lawyers will work in good faith to provide notice of this Order to any court reporters or videographers who may receive Confidential Information.

Prior to disclosing information designated as Confidential Information to any other persons specified in Paragraph 3 of this Order, the party receiving the information shall first give a copy of this Order to such persons.

5. Methods of Designation. Any document produced in this proceeding containing Confidential Information or any written discovery response containing Confidential Information shall be marked by the designating party with the legend: “Confidential.” Deposition testimony

may be designated as Confidential during the course of the deposition by counsel for the party whose information is disclosed in the testimony or in writing served upon all parties by specifically noting the page and line numbers designated, within thirty (30) calendar days after the transcript of the deposition becomes available. If testimony is designated as Confidential, the court reporter shall make the appropriate legend on each page of the deposition transcript where such designated testimony appears. The cover page of a deposition transcript containing any designated portions shall indicate that it contains portions of testimony subject to a confidentiality order. During the time period between the deposition testimony and the deadline to designate such testimony, the deposition testimony in its entirety shall be designated and treated as Confidential Information by all parties. The use of a document as an exhibit at a deposition or other pretrial or trial proceedings shall not in any way affect its designation as Confidential Information.

6. Filing Confidential Information with the Court. This Order explicitly permits parties to file under seal with the Clerk pleadings that contain Confidential Information. Any pleading filed or lodged with the Court containing Confidential Information shall be placed in a sealed envelope or other appropriately sealed container with the cover page of the pleading on the outside of the envelope on which shall be a typed statement in the following form (as applicable):

SUBJECT TO PROTECTIVE ORDER — CONFIDENTIAL INFORMATION

The contents of this envelope are confidential, filed under seal, and are subject to a Protective Order of the Court. The contents are not to be made public except upon order of the Court.

7. Presentation of Confidential Information to the Court. With respect to testimony elicited during hearings, at trial or other proceedings before the Court, whenever

counsel for any party deems that any question or line of questioning calls for the disclosure of Confidential Information, counsel shall alert the Court to this concern and the Court shall take such action as it deems necessary to protect the information. For purposes of any trial in this case, a party's failure to have previously challenged the designation of Confidential Information shall not prevent that party from arguing that the trial, including any discussion of the Confidential Information, should proceed publicly.

8. Trial Exhibits. If the parties have not reached agreement as to the confidentiality of a listed trial exhibit, the Designating Party may file a motion for protective order with regard to the confidentiality of the document at trial within ten (10) calendar days after service of the other party's list of trial exhibits in their pre-trial submissions. To the extent any document designated pursuant to the terms of this Order is proposed for use during trial, but was not listed as a trial exhibit prior to trial, the parties shall attempt to resolve any issues regarding such confidentiality by agreement or, if no agreement can be reached, by asking the Court to address the issue prior to the introduction of the document as evidence.

9. Public Knowledge or Independent Acquisition. Notwithstanding any other provision of this Order, no person shall be precluded from using or disclosing, in any lawful manner, any Confidential Information that, prior to disclosure, (a) is public knowledge; (b) was independently known by that person; (c) after disclosure, either is independently and lawfully developed or is acquired by the receiving party from any source, other than the designating source, unless the receiving party knows or should know that the person came into possession of such Confidential Information unlawfully; or (d) becomes public knowledge other than by an act or omission of the receiving party. The burden of proving prior possession, prior knowledge, or prior public knowledge of such Confidential Information shall be on the receiving party.

10. Disputes Over Designation. This Order shall not preclude any party from bringing before the Court, at any time, the question of whether any particular information is properly designated as Confidential. If a party disputes the designation of particular information as Confidential, that party has the burden to seek relief from the Court, and the party asserting the propriety of any designation has the burden to defend the designation. In its request for relief from the Court, the party disputing the designation of any information shall provide specific citations to the particular information that it believes in good faith is not Confidential Information. Prior to bringing any motion, the parties shall meet and confer in good faith to attempt to resolve the dispute. The party disputing the designation shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of this Order. If the dispute cannot be resolved, there shall be no disclosure inconsistent with the limitations on disclosure provided for under this Order for the designation in dispute absent an express ruling by the Court granting permission for the disclosure.

11. Inadvertent Failure to Designate. Inadvertent failure to designate qualified information as Confidential Information produced during the course of this proceeding does not, standing alone, waive the designating party's right to secure protection under this Order for such material produced during the course of this proceeding. Parties shall use reasonable care in designating qualified information as Confidential Information. If material is appropriately designated as Confidential Information after the material was initially produced, the party receiving the information, on timely notification of the designation, must make reasonable efforts

to assure that the material is treated in accordance with the provisions of this Order. Where a party or third party (pursuant to this Order) to this proceeding changes the confidentiality designation under this Order, that party or third party shall promptly furnish the information re - designated.

12. No Waiver. Nothing in this Order shall be deemed a waiver of the right of any party to oppose production of any information or material on any available grounds or to object to the authenticity or admissibility of any document, testimony, or other evidence.

13. Unauthorized Disclosure of Confidential Material. If a party receiving protected material learns that, by inadvertence or otherwise, it has disclosed Confidential Information to any person or in any circumstance not authorized under this Order, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures; (b) use its best efforts to retrieve all copies of the protected material; (c) inform the person or persons to whom unauthorized disclosure was made of all the terms of this Order; and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A. If a receiving party discovers any loss of Confidential Information or a breach of security, including any actual or suspected unauthorized access, relating to another party’s Confidential Information, the receiving party shall: (1) promptly provide written notice to designating party of such breach; (2) investigate and make reasonable efforts to remediate the effects of the breach, and provide designating party with assurances reasonably satisfactory to designating party that such breach shall not recur; and (3) provide sufficient information about the breach that the designating party can reasonably ascertain the size and scope of the breach. The receiving party agrees to cooperate with the designating party or law enforcement in investigating any such security incident. In any event,

the receiving party shall promptly take all necessary and appropriate corrective action to terminate the unauthorized access.

14. Confidential Information Subpoenaed or Ordered Produced in Other

Litigation. If a party is served with a subpoena or court order issued in other litigation that compels disclosure of any information or items designated in this action as Confidential Information, that party must:

- (a) promptly notify in writing the designating party. Such notification shall include a copy of the subpoena or court order; and
- (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Protective Order.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the designating party in this action an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order is issued. If the designating party timely seeks a protective order, the party served with the subpoena or court order shall not produce any information designated in this action as Confidential Information before a determination by the Court from which the subpoena or order issued, unless the party has obtained the designating party's permission. The designating party shall bear the burden and expense of seeking protection in that court of its Confidential Information — and nothing in these provisions should be construed as authorizing or encouraging the party that received the Confidential Information in this action to disobey a lawful directive from any other court.

The designating party shall promptly file an appropriate objection or motion regarding the requested materials and subpoena or order.

15. A Non-Party's Confidential Information Sought to be Produced in this Litigation.

(a) The terms of this Order are applicable to information produced by a non-party in this action and designated as Confidential Information. Such information produced by a non-party in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a non-party from seeking additional protections.

(b) In the event that a party is required, by a valid discovery request, to produce a non-party's Confidential Information in its possession, and the party is subject to an agreement with the non-party not to produce the non-party's confidential information, then the party shall:

(i) promptly notify in writing the requesting party and the non-party that some or all of the information requested is subject to a confidentiality agreement with the non-party;

(ii) promptly provide the non-party with a copy of the Stipulated Protective Order in this action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(iii) make the information requested available for inspection by the non-party, if requested.

(c) If the non-party fails to seek a protective order from this court within 14 calendar days of receiving the notice and accompanying information, the receiving party may produce the non-party's confidential information responsive to the discovery request. If the non-party timely seeks a protective order, the receiving party shall not produce any information in its

possession, custody, or control that is subject to the confidentiality agreement with the non-party before a determination by the court. Absent a court order to the contrary, the non-party shall bear the burden and expense of seeking protection in this court of its confidential information.

16. Production of Privileged or Otherwise Protected Material.

(a) When a producing party gives notice to a receiving party that certain produced material is subject to a claim of privilege or other protection, the obligations of the receiving party are those set forth in District of Columbia Superior Court Rules of Civil Procedure 26(b)(5)(B). Disclosures among attorneys of work product or other communications among attorneys of work relating to issues of common interest shall not affect or be deemed a waiver of any applicable privilege or protection from disclosure.

(b) A producing party may assert privilege or protection over produced documents at any time by notifying the receiving party in writing of the assertion of privilege or protection. After being notified, information that contains privileged matter or attorney work product shall be returned or destroyed as provided in Rule 26(b)(5)(B) within five (5) calendar days if such information appears on its face to have been inadvertently produced, or if requested. The receiving party may use such information only to challenge the claim of privilege or protection.

(c) The production of a privileged or work-product-protected document is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privilege or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or any other federal or state proceeding.

17. Privilege Logs.

(a) The parties agree to furnish logs that comply with Superior Court Rule of Civil Procedure 26(b)(5) and any other legal requirements for all documents withheld or redacted on the basis of privilege, attorney work product, or similar doctrines.

(b) Communications involving inside or outside counsel for the parties related to this case that post-date the filing of the complaint need not be placed on a privilege log.

(c) The parties agree to log only the Last In Time Emails in a thread and need not log earlier, less inclusive email messages or “thread members” that are fully contained within the Last In Time Email.

(d) Communications may be identified on a privilege log by category, rather than individually, if appropriate.

(e) The parties shall exchange their respective privilege logs at a time to be agreed upon by the parties following the production of documents, or as otherwise ordered by the Court.

18. Final Disposition.

Within 60 calendar days after the final disposition of this action, each receiving party must return all Confidential Information to the producing party or destroy such material. As used in this subdivision, “all Confidential Information” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Confidential Information. Whether the Confidential Information is returned or destroyed, the receiving party must submit a written certification to the producing party (and, if not the same person or entity, to the designating party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Confidential Information that was returned or destroyed and (2) affirms that

the receiving party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Confidential Information. Notwithstanding this provision, the Lawyers are entitled to retain archival copies of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential Information. Any such archival copies that contain or constitute Confidential Information remain subject to this Order.

19. Duration. Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a designating party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law and the time limits for filing a petition for writ of certiorari to the Supreme Court of the United States if applicable.

20. Violation. Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

21. Relevant Laws. Nothing contained herein shall alter either party's obligations to maintain and protect information that is privileged or otherwise protected under state, federal, or common law or to alter the District's obligations under the District of Columbia Freedom of Information Act.

IT IS SO ORDERED, this _____ day of _____, 2019.

**FERN FLANAGAN SADDLER
ASSOCIATE JUDGE**

Copies to:

Jimmy Rock, Esq.
Benjamin Wiseman, Esq.
Randolph T. Chen, Esq.
Jennifer Rimm, Esq.

Chantale Fiebig, Esq.
Joshua Lipshutz, Esq.
Alison Watkins, Esq.

Via CaseFileXpress

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], hereby state the following:

- (1) I have read in its entirety and agree to be bound by the attached Protective Order that was issued by the Superior Court of the District of Columbia on _____ [date] in the case of *District of Columbia v. Facebook Inc.*, Case No. 2018 CA 008715 B.
- (2) I will not use nor disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.
- (3) I further agree to submit to the jurisdiction of the Superior Court for the District of Columbia for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

Signed: _____

Printed Name: _____